Chin Wee Yee v Menteri Dalam Negeri & Anor

HIGH COURT (MIRI) — ORIGINATING MOTION NO 25–02 OF 1996 (MR)
ELIZABETH CHAPMAN JC
11 NOVEMBER 1996

Administrative Law *— Exercise of administrative powers — Restricted residence — Validity of order — Appeal against decision of Deputy Minister — Whether Deputy Minister had to appoint a committee to hear the appeal — Whether Deputy Minister may exercise discretion as to whether to hold an enquiry — Whether the requirements under s 2(1) of the Act had been considered — Restricted Residence Act 1933 ss 2(ii) & 2A(i)*

The applicant was detained under two orders ('the orders') of the Deputy Home Affairs Minister ('the Deputy Minister') made under ss 2(ii) and 2A(i) of the Restricted Residence Act 1933 ('the Act'). He made an appeal against the decision of the Deputy Minister and submitted, relying on s 33A of the Interpretation and General Clauses Ordinance ('the Ordinance') and s 46 of the Interpretation Act 1967, that the Deputy Minister had to appoint a committee to hear the appeal which he claimed the Deputy Minister had failed to do. He applied for: (i) an order of certiorari to quash the orders and/or for a declaration that the orders were null and void; (ii) an order of mandamus that the Deputy Minister convene and/or hear the appeal; and (iii) an order of habeas corpus and/or for damages.

Held, dismissing the application with costs:

Section 33A(1) of the Ordinance would apply where there is any written law requiring the Minister to appoint a committee on appeal being made to him. The only statutory provision regarding enquiry is provided under s 2(ii) of the Act which confers on the Minister a discretion to hold an enquiry if he should deem it necessary. In this case, the Deputy Minister was satisfied that further enquiry was not necessary and therefore an order was then made under s 2(ii) of the Act after taking into consideration the applicant's appeal. It was clear that the requirements under s 2(1) of the Act had been considered by the Deputy Minister; therefore the application was dismissed (see pp 587H–I and 588A–E); *Timbalan Menteri Hal Ehwal Dalam Negeri Malaysia & Ors v Cheow Siong Chin* [1988] 1 MLJ 432 followed.

[Bahasa Malaysia summary

Pemohon telah ditahan di bawah dua perintah ('perintah-perintah tersebut') Timbalan Menteri Hal Ehwal Negeri ('Timbalan Menteri') yang dibuat di bawah ss 2(ii) dan 2A(i) Akta Kediaman Terhad 1933 ('Akta tersebut'). Dia telah merayu terhadap keputusan Timbalan Menteri dan menghujahkan, dengan bergantung kepada s 33A Ordinan Tafsiran dan Fasal Am ('Ordinan tersebut') dan s 46 Akta Tafsiran 1967, bahawa Timbalan Menteri haruslah melantik suatu jawatankuasa untuk mendengar rayuan yang mana dia menuntut

Timbalan Menteri telah gagal berbuat demikian. Dia memohon: (i) perintah certiorari bagi membatalkan perintah-perintah tersebut dan/atau untuk suatu perisytiharan bahawa perintah-perintah tersebut adalah tak sah dan terbatal; (ii) perintah mandamus agar Timbalan Menteri bersidang dan/atau mendengar rayuan itu; dan (iii) suatu perintah habeas corpus dan/atau untuk ganti rugi.

Diputuskan, menolak permohonan dengan kos:

Seksyen 33A(1) Ordinan tersebut terpakai di mana terdapat mana-mana undang-undang bertulis yang menghendaki Menteri melantik sebuah jawatankuasa sekiranya rayuan dibuat kepadanya. Satu-satunya peruntukan statutori mengenai siasatan disediakan di bawah s 2(ii) Akta tersebut yang mengurniakan budi bicara ke atas Menteri untuk mengadakan siasatan sekiranya beliau fikirkan ianya adalah perlu. Dalam kes ini, Timbalan Menteri puas hati bahawa siasatan lanjut tidak perlu dan oleh itu suatu perintah kemudiannya dibuat di bawah s 2(ii) Akta tersebut selepas mengambil kira rayuan pemohon. Adalah jelas bahawa keperluan di bawah s 2(1) Akta tersebut telah dipertimbangkan oleh Timbalan Menteri; dengan itu permohonan ditolak (lihat ms 587H–I dan 588A–E); *Timbalan Menteri Hal Ehwal Dalam Negeri Malaysia & Ors v Cheow Siong Chin* [1988] 1 MLJ 432 diikut.]

Notes

For cases on restricted residence, see 1 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 46–49.

Case referred to

Timbalan Menteri Hal Ehwal Dalam Negeri Malaysia & Ors v Cheow Siong Chin [1988] 1 MLJ 432 (folld)

Legislation referred to

Federal Constitution art 5(3)
Interpretation Act 1967 s 46
Interpretation and General Clauses Ordinance s 33A
Restricted Residence Act 1933 ss 2(ii), 2A(i)

Tai Choi Yu (*Tai Choi Yu & Co*) for the applicant.
Mohd Abazafree (Federal Counsel) for the respondent.

Cur Adv Vult

Elizabeth Chapman JC: The applicant in this case seeks an order of certiorari to remove into this court and quash the two orders of the Deputy Home Affairs Minister dated 14 February 1996 ordering the applicant to be arrested and detained at Miri and ordering the applicant to be detained at Kuala Pilah town, Kuala Pilah District, Negeri Sembilan made under ss 2(ii) and 2A(i) of the Restricted Residence Act 1933 ('the Act'); and/or alternatively, for a declaration that the two orders of the Deputy Home

A Affairs Minister were ultra vires and null and void. Further, the applicant seeks an order of mandamus that the first respondent convene and/or hear the appeal as contained in encl A dated 27 December 1995 and issued under the Act and under art 5(3) of the Federal Constitution of Malaysia; and/or alternatively for an order of habeas corpus directed to the Ketua B Polis, Negeri Sembilan, the second respondent and/or for damages.

There are two affidavits filed, one is that of the applicant's father Chin Hen Pin affirmed on 25 March 1996 and the other of the applicant himself affirmed on 28 March 1996.

The applicant in this case was suspected of being a pimp living on C immoral earnings in Miri. He was arrested and detained at the Miri Lambir Prison. The applicant was found in a home where there were prostitutes living. According to him, he had regularly visited the house as it belonged to his cousins who lived there. He said he had been induced to sign documents and was coerced into admitting certain allegations. He had instructed his lawyer to appeal against his detention but the appeal D was not heard.

It was submitted on the applicant's behalf that encl A was served on the applicant on 26 January 1996 and he appealed on 2 February 1996 within the 14-day period (see cl 2 of encl A). That being the case, the Minister of Home Affairs had to appoint a committee to hear the appeal; E s 33A of the Interpretation and General Clauses Ordinance and s 46 of the Interpretation Act 1967 were referred to. Learned counsel submitted that there was no evidence that such a committee had been appointed. Furthermore, the first respondent, it was alleged, had failed to give any official acknowledgement of the receipt of the notice of appeal sent by the applicant's counsel; there was no evidence that the appeal was heard at all F and that if it was heard, the applicant was not informed that his appeal had been dismissed. Section 33A(1) of the Interpretation and General Clauses Ordinance reads as follows:

> Where under any written law an appeal against the decision of any person lies to the Yang di-Pertuan Agong or a Minister it shall be lawful for the G Yang di-Pertuan Agong or the Minister, unless the contrary intention appears in such written law, when such appeal is made to him to appoint a committee for the purpose of hearing such appeal and advising him as to the decision that should be made thereon: provided that no person from whose decision the appeal is made shall be appointed a member of such committee.

H This provision would, in my view, apply where there is any written law requiring the Minister to appoint a committee on appeal being made to him.

Here, the only statutory provision regarding enquiry is provided under s 2(ii) of the Act. Section 2(ii) reads:

> The Minister thereafter after such further enquiry as he may deem necessary I may make an order in the Form in the Schedule that from a date to be stated in the order, the person do reside in such area as may be specified in the order or do not enter into such area or areas as may be so specified.

The section confers on the Minister a discretion to hold an enquiry if he should deem it necessary.

In the present case, when the warrant of arrest and detention order were served on the applicant together with the ground of arrest, he had submitted his appeal letter through his counsel. From the Deputy Minister's affidavit affirmed on 27 April 1996, the applicant's appeal letter had been received (para 7) and he was satisfied that further enquiry was not necessary (see para 8); an order was then made under s 2(ii) of the Act (see paras 9 and 10) after taking into consideration the applicant's appeal letter (see para 11). The requirements under s 2(1) of the Act had been considered by the Deputy Minister (see paras 5 and 6).

In *Timbalan Menteri Hal Ehwal Dalam Negeri Malaysia & Ors v Cheow Siong Chin* [1988] 1 MLJ 432, it was held that an enquiry by the Deputy Minister before he makes an order under s 2(ii) of the Restricted Residence Enactment ('the Enactment') is optional and for the purpose only of satisfying himself that there are reasonable grounds for believing that the respondent should have his residence restricted. The respondent is not entitled as of right to an enquiry before an order under s 2(ii) of the Enactment is issued against him.

The applicant in this case was informed of the grounds of his arrest and detention and representations were made on his behalf through his counsel. He was therefore given an opportunity of being heard.

For the reasons stated, this application is dismissed with costs.

Application dismissed.

Reported by Loo Lai Mee